

RICHARD B. AND SHIRLEY A. JARRETT

IBLA 75-131

Decided February 27, 1975

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the Silver King Lode mining claim null and void CA-2262.

Affirmed.

1. Mining Claims: Generally--Secretary of the Interior

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated and the rights of the public preserved.

2. Mining Claims: Lands Subject to--Small Tract Act: Generally

Where land was subject to a mining claim at the time a small tract classification order withdrew the land from mineral entry and the mining claim was thereafter declared null and void, a subsequent transferee of the mining claim has no standing to object to the order classifying the land under the Small Tract Act.

3. Mining Claims: Withdrawn Land

A mining claim located on lands segregated or withdrawn from mineral location at the time of location is null and void ab initio.

Appearances: Richard B. Jarrett, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Richard B. Jarrett and Shirley A. Jarrett appeal 1/ from a decision dated August 7, 1974, by the Bureau of Land Management State Director for California, wherein their Silver King Lode mining claim, located June 11, 1970, was declared null and void ab initio because the land embraced by this purported location, lot 20 section 8, T. 31 N., R. 5 W., M.D.M., Shasta County, California (formerly identified as MS 6423, California), was classified as suitable for title transfer under the Small Tract Act, 43 U.S.C. § 682a (1970), by Small Tract Classification C3-3 (28 F.R. 3736, April 17, 1963), and thereby segregated from location under the United States mining laws. The decision recited that the Silver King lode mining claim, located in 1924 and surveyed in MS 6423, had been subjected to contest proceedings in 1962 when BLM charged no discovery of a valuable mineral deposit had been disclosed within the boundaries of the claim. Following due process procedures, after notice and an opportunity for a hearing, a hearing examiner (now Administrative Law Judge) found that no discovery of a valuable mineral deposit had been made on the claim and declared the Silver King lode mining claim null and void for lack of discovery. Following appeal by the claimants the decision that the Silver King lode mining claim is null and void was affirmed by the Department in United States v. Ed and Leona Jaensch, A-30225 (April 29, 1965).

The record indicates that the Jarretts took possession of the former Silver King claim from the Jaenschs by a quit claim deed dated June 19, 1968, and recorded in Book 957, page 344, of the Records of Shasta County. The Jarretts apparently have been residing on the claim since they obtained possession from the previous claimants. The State Director's decision provided that after the decision becomes final, the Jarretts would have 90 days to remove their improvements from the property and to terminate their unauthorized use of the land.

Essentially it appears that appellants question the authority of the Department of the Interior and the BLM in administration of the mining laws. It also appears that appellants cannot grasp that a mere paper location does not create a valid mining claim. They have alleged no facts upon which relief can be granted.

1/ They have submitted a rambling letter raising many objections and questions. In order to give Secretarial review of their letter this Board, acting for the Secretary, is considering the letter as an appeal. The only relevant questions which need be resolved are those relating to the status of the land.

[1] The Department of the Interior has plenary authority over the administration of the public lands, including mineral lands, and the Secretary of the Interior has broad authority to issue regulations concerning them. Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963). The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated and the rights of the public preserved. Palmer v. Dredge Corp., 398 F.2d 791 (9th Cir. 1968), cert. denied, 393 U.S. 1066 (1969); Duguid v. Best, 291 F.2d 235 (9th Cir.), cert. denied, 372 U.S. 906 (1962). The United States, which holds legal title to public lands, can prescribe procedures which any claimant must follow to acquire rights in the public sector. Best v. Humboldt, supra.

[2] The Secretary of the Interior, under authority of the Small Tract Act, exercised proper administrative discretion in promulgating regulations precluding mineral entry on lands classified for disposal under the Small Tract Act. Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970). Lands classified under the [Small Tract] Act of June 1, 1938, as amended, are segregated from all appropriation including location under the mining laws. 43 CFR 2731.2(b). Mere assertion of a mining claim on public lands does not prevent the Secretary from entering an order withdrawing the land from mineral entry and classifying it as suitable for transfer under the Small Tract Act. Lutzenhiser v. Udall, supra. Where land was subject to a mining claim at the time of small tract classification order withdrawing the land from mineral entry and the mining claim was thereafter null and void, a subsequent transferee of the mining claim has no standing to object to the order classifying the land under the Small Tract Act. Cf. Lutzenhiser v. Udall, supra.

No hearing is necessary to invalidate mining claims located on land previously classified for small tract disposition. Cf. Frank Melluzzo, 72 I.D. 21 (1965).

Land which has been classified as suitable for disposition under the Small Tract Act is not open to location under the mining laws. Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966); aff'd Lutzenhiser v. Udall, supra.

[3] Mining locations made on land segregated from operation of the mining laws are null and void ab initio. United States v. A. F. Anderson, 15 IBLA 286 (1974).

It is crystal clear that whatever rights the Jaenschs had in the Silver King mining claim were extinguished when the declaration that that claim was null and void was affirmed by the Department in 1965. The Jaenschs had no recognizable claim to the public

land at the time they gave the quit claim deed to the Jarretts in 1968. The Jarretts, therefore, obtained no right to use or occupy the public land from that quit claim deed.

Similarly, the purported location of the Silver King Lode mining claim by the Jarretts in 1970 was of no avail because the land was not open to operation of the mining laws at that time.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed. The case file is remanded for further appropriate action.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

